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Executive summary

Note by the Secretariat

Addendum

Contents

		Page
II.	Executive summary	2
	Nicaragua	2

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II. Executive summary

Nicaragua

1. Introduction: Overview of the legal and institutional framework of Nicaragua in the context of implementation of the United Nations Convention against Corruption

Nicaragua signed the Convention on 10 December 2003, ratified it on 16 December 2005 and deposited its instrument of ratification on 15 February 2006.

Legislative approval of an international instrument gives that instrument legal effect once it has entered into force, provided that it is not contrary to the Political Constitution of Nicaragua. The Convention therefore has the force of law and can be applied directly except in cases in which such application is contrary to the Constitution.

Criminal procedure is based on the accusatorial system and criminal proceedings are usually instituted by the Public Prosecution Service (*Ministerio Público*); criminal charges may also be brought by the victim of an offence, acting as private prosecutor or plaintiff, or by any other person in connection with a prosecutable offence. In that regard, the Attorney-General's Office (*Procuraduría General de la República*) also has broad powers of indictment.

The most relevant institutions in the fight against corruption are the Comptroller-General's Office (*Contraloría General de la República*), the Public Prosecutor's Office (*Fiscalía General de la República*) within the Public Prosecution Service (the Anti-Corruption Unit and the Organized Crime Unit), the National Police (*Policía Nacional*) (the Financial Investigations Directorate, which has a department specialized in the investigation of crimes against public administration), the Attorney-General's Office (the Criminal Division, which has a specialized anti-corruption unit and a specialized unit against financial crimes). The National Commission for the Comprehensive Development of Sound Public Management plays a role in the development of policies for countering corruption. The National Commission for Inter-institutional Coordination of the Criminal Justice System was established, in accordance with articles 415 and 417 of Act No. 406 (Code of Criminal Procedure of Nicaragua), as a platform for coordination among the institutions that constitute the criminal justice system.

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

Active bribery of national public officials is governed by articles 446 and 447, paragraph 2, of the Criminal Code; while active bribery of a public official committed by another public official is also included in this class of offence, the title "bribery committed by an individual" could be interpreted as limiting the offence.

Passive bribery of public officials is covered by articles 445 and 447 of the Criminal Code.

Active bribery of a foreign public official or an official of a public international organization is governed by article 449, paragraph 1, second alternative of the Criminal Code. Passive bribery of such officials has not been established. Article 449, first alternative is a special offence with regard to article 446 and article 447, paragraph 2, and deals with active bribery of national officials by foreign nationals.

Various elements of the offence of active and passive trading in influence are established in article 450 of the Criminal Code. However, exertion of influence by an individual over a public official or individual (through promise, offering or giving), in order that the latter abuse his or her real or supposed influence with a view to obtaining an undue advantage from an administration or authority, has not been criminalized, nor has the "solicitation or acceptance" of an undue advantage in order that the actor abuse his or her influence.

Some aspects of the offence of bribery in the private sector are covered by articles 273 and 274 of the Criminal Code, although those provisions do not refer specifically to the promise, offering or giving of an undue advantage to, or the solicitation or acceptance of such an advantage by, a person who directs or works, in any capacity, for a private sector entity.

Money-laundering, concealment (arts. 23 and 24)

The laundering of the proceeds of crime is established as an offence in articles 226, 282 and 283 of the Criminal Code. The classification applies to any criminal act committed within Nicaragua or abroad that is punishable at the upper limit by a penalty of five or more years of imprisonment. Although it is a restrictive requirement, a wide range of corruption offences in Nicaragua complies with it. Cases in which the offender commits both the predicate offence and the laundering of the proceeds of that offence, so-called "self-laundering", are not excluded.

Concealment is governed by article 470 of the Criminal Code, while article 471 of the Code governs aggravating circumstances. The element of continued retention falls within the scope of prohibition established in the concepts of "concealment" (*ocultamiento*) and "assistance" (*auxilio*).

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

Embezzlement is governed by articles 451, 452 and 453 of the Criminal Code.

Abuse of functions is established as an offence in articles 432, 433, 434, 435 and 436 of the Criminal Code. Articles 432 and 433 of the Code require that harm have been caused to the rights of another person.

Nicaragua establishes illicit enrichment as an offence in article 448 of its Criminal Code.

While embezzlement in the private sector is not specifically provided for, such conduct is punishable under the criminal offences of undue appropriation and retention (art. 238 of the Criminal Code) and theft, swindling or appropriation involving a minor sum (art. 548 of the Code).

Obstruction of justice (art. 25)

Nicaragua criminalizes different offences related to the obstruction of justice in articles 477, 478, 480 and 481 of the Criminal Code. While it is true that article 478 covers promise and offering in order to induce false testimony and article 481 governs the use of violence and intimidation for the same purpose, these articles do not cover the modality by which such measures interfere in the giving of testimony (i.e. non-appearance of the witness or expert). Article 480, which covers interference with the giving of testimony, does not contain the wording "promise, offering or giving of an undue advantage". Interference in the production of other kinds of evidence (as different from witness and expert testimonies) has not been criminalized.

The conduct described in article 25 (b) is criminalized in articles 184 to 187 and 481 of the Criminal Code. Articles 184 to 187 cover threats in general and apply to violence against or intimidation of justice and law enforcement officials. The penalties provided for in article 481, which applies to prosecutors and lawyers, differ from those provided for in articles 184 to 187, which apply to justice and law enforcement officials.

Liability of legal persons (art. 26)

In Nicaraguan law, the liability of legal persons is not established; however, accessory penalties may be imposed on a legal person (art. 113 of the Criminal Code). Whoever acts on behalf of a legal person is personally liable (art. 45). A draft amendment provides for the criminal liability of legal persons.

A legal person may be held subsidiarily liable for civil damage caused by a corruption offence (arts. 121 and 125 of the Criminal Code).

Articles 105 to 109 of Act No. 737 on public procurement contain provisions relating to the administrative liability of legal persons and allow suspension of the participation of such persons in public procurement.

Participation and attempt (art. 27)

The Criminal Code of Nicaragua governs participation (arts. 41, 43, 44, 72, 75 and 459) and attempt (arts. 27, 28, 73 and 74); preparation for an offence is criminalized within the scope of the concepts of proposition (*proposición*) or provocation (*provocación*) (arts. 31 and 32), but not for corruption offences.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

All offences established in accordance with the Convention are punishable by deprivation of liberty for a term of up to 10 years; in addition, an accessory penalty of general disqualification is imposed for the same period as the imprisonment penalty.

The Political Constitution (arts. 130, 138, 139, 151, 154 and 172) and the Code of Criminal Procedure (arts. 52, 131, 251 and 334) grant immunity to senior officials, members of the National Assembly and judges; it should be noted that the Public Prosecution Service may initiate investigations while a procedural obstacle persists and that the statute of limitations period is suspended during the period of immunity.

The principle of prosecutorial discretion does not apply to corruption offences — the investigation and prosecution of such offences is mandatory.

Article 44 of Act No. 745 on enforcement, benefits and jurisdictional control of criminal sanctions provides that, in the majority of cases involving corruption offences, defendants remain in custody for the duration of the proceedings.

Parole and early release may be granted after two thirds to three quarters of the sentence have been served (art. 16 of Act No. 745 and art. 404 of the Code of Criminal Procedure).

A public official may, at the request of a party, be suspended "in the performance of his or her duties if the act of which he or she is accused was committed by taking advantage of his or her position" (art. 167(1)(j) of the Code of Criminal Procedure); in practice the official may be reassigned. "Dismissal" during the conduct of criminal proceedings is not permissible by virtue of the constitutional principle of innocence (art. 34 (1) of the Constitution).

If the public servant is found guilty, article 57 of the Criminal Code provides for the penalty of disqualification. Most corruption offences carry such a penalty.

Article 82 of Act No. 681 establishing the Comptroller-General's Office and the system for monitoring public administration and auditing State property and resources, article 47 of Act No. 476 on the civil service and careers in public administration, and article 15 of Act No. 438 on the integrity of public officials establish that administrative and disciplinary sanctions are without prejudice to the civil or criminal liability of public servants.

With regard to cooperation with the justice system, punishment may be reduced if the accused person gives voluntary testimony at the first hearing before the competent court or judge (art. 35 of the Criminal Code), or by an agreement in the criminal proceedings (art. 61 and 62 of the Criminal Code). The law does not provide for the possibility of granting immunity from prosecution in exchange for cooperation in the investigation or prosecution of an offence except in the limited cases in which the principle of prosecutorial discretion may be applied (art. 55 of the Criminal Code and art. 41 of Act No. 735 on the prevention, investigation and prosecution of organized crime and on the administration of seized, confiscated and abandoned property). Article 67 of Act No. 735 provides for the protection of, inter alia, persons who are at risk or in danger because of their direct or indirect involvement in the investigation of an offence to which the Act refers. Nicaragua has no agreements or arrangements with other States in accordance with which it may reduce punishment or grant immunity from prosecution in international cases.

Protection of witnesses and reporting persons (arts. 32 and 33)

The Code of Criminal Procedure and Act No. 735 provide for measures to protect witnesses, experts and victims. Act No. 735 includes a list defining some but not all offences established in accordance with the Convention as organized crime offences. Although Act No. 735 appears to request that the act to which the measure relates also meet the definition of organized crime (two or more persons, stability of the group), the Nicaraguan authorities have indicated that Act No. 735 is in practice applicable to all offences contained in the list.

Similarly, the Nicaraguan authorities have indicated that, on the basis of articles 195 and 201 of the Code of Criminal Procedure, all available protection measures can be taken.

A protection programme for persons entitled to protection has yet to be established. Nicaragua has no agreements or arrangements with other States for the relocation of witnesses, experts or victims. Act No. 735 provides for the protection of victims insofar as they are witnesses. The participation of victims in the appropriate stages of criminal proceedings is governed by articles 9, 110, 195, 196 and 262 of the Code of Criminal Procedure.

The protection of reporting persons is governed by articles 67 and 73 of Act No. 735. Both private sector workers and public officials may contest retaliation before an employment tribunal and in disciplinary proceedings.

Freezing, seizure and confiscation; bank secrecy (arts. 31 and 40)

Article 112 of the Criminal Code governs confiscation of the proceeds of crime and of the instrumentalities used in or destined for use in the commission of an offence.

Freezing for the purpose of confiscation is governed by articles 166, 167, paragraph 2, and 215 to 220 of the Code of Criminal Procedure and article 33 of Act No. 735.

While Act No. 735 provides for the establishment of a unit for the administration of seized, confiscated or abandoned property, the unit has not yet been established owing to the fact that the Act was adopted relatively recently. As previously mentioned, Act No. 735 refers to several but not all corruption offences.

Article 112 of the Criminal Code governs the confiscation of proceeds of crime that have been transformed or converted into other property. The law can be interpreted to mean that it applies to confiscation up to the value of the property in question when such property has been intermingled with property acquired from legitimate sources and to confiscation or seizure of income or other benefits derived from such proceeds of crime.

The burden of proof always lies with the prosecuting authority.

Article 112 of the Criminal Code provides that confiscation shall not prejudice the rights of bona fide third parties who have legally acquired the property in question.

Bank secrecy may be lifted by the judge at the request of the Public Prosecutor or the Director General of the National Police (art. 211 of the Code of Criminal Procedure, art. 34 of Act No. 735) and the Financial Analysis Unit (art. 18 of Act No. 793 establishing the Financial Analysis Unit).

Statute of limitations; criminal record (arts. 29 and 41)

The statute of limitations period for most corruption offences is 3 to 10 years (art. 131 of the Criminal Code). Article 73 of the Code of Criminal Procedure establishes that the statute of limitations period shall be suspended if the accused person flees from justice or if the court declares him or her mentally unfit to stand trial. In accordance with article 131, final part, and article 16 of the Criminal Code, there is no statute of limitations for any offence that may be prosecuted in Nicaragua pursuant to the international instruments ratified by the country.

Previous convictions may be taken into account for evidentiary purposes or as aggravating circumstances pursuant to the principle of freedom of evidence.

Jurisdiction (art. 42)

Nicaragua has established its jurisdiction over most of the circumstances referred to in article 42 of the Convention, although not when the alleged offender is present in its territory and Nicaragua does not extradite him or her.

Jurisdiction over corruption offences committed against one of its nationals has been established in relation to crimes committed against Nicaraguan officials (art. 15 of the Criminal Code).

With regard to nationals of Nicaragua, article 19 of the Criminal Code governs the obligation to "try or extradite". The nationality principle (*principio personal*), governed by article 14 of the Criminal Code, covers jurisdiction under the requirements set forth therein.

Nicaragua has legislation, treaties and channels of communication in the context of international cooperation in criminal matters, for example on the exchange of evidentiary information and joint investigations. On the basis of these channels, the competent authorities of Nicaragua may consult with their counterparts in order to coordinate their actions, however, no practical examples of such cases concerning corruption were presented.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

Nicaragua has established regulations providing for annulment of a contract (arts. 100 and 101 of Act No. 681 and arts. 71, 112, 113, 115 and 116 of Act No. 737); however no specific provision is made for the withdrawal of a concession.

Nicaragua has regulations governing compensation for damage in criminal, civil and administrative cases. It should be noted that civil proceedings (arts. 81 to 87 of the Code of Criminal Procedure) may be brought by individuals or by the State, while civil liability (notices of irregularity in the use of public funds, as provided for in arts. 84 to 87 of the Act establishing the Comptroller-General's Office) and administrative liability (fines, as provided for in arts. 77 and 83 of the same Act) are instruments that the State may use to remedy damage suffered as a result of a corruption offence.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

The National Police, the Attorney-General's Office and the Public Prosecution Service all have specialized units for the investigation of offences against public administration; detailed statistics on training have been furnished.

Cooperation between national authorities is provided for in article 42 of Act No. 735 and article 140 of the Code of Criminal Procedure. The Attorney-General's Office, the National Police and the Public Prosecution Service have signed agreements on cooperation in the investigation, prosecution and recovery of assets derived from corruption offences and related offences. It has also been decided to establish an inter-institutional database.

Cooperation between law enforcement bodies and private companies is governed by article 211 of the Code of Criminal Procedure and article 34 of Act No. 735, which relate to the exchange of financial information and the duty of specified companies and institutions to collaborate. Furthermore, decentralized forums for discussion with civil society have been organized, in which the private sector has also participated. Powers and obligations to report an offence are governed by articles 222 and 223 of the Code of Criminal Procedure, and offices and telephone lines have been established to receive complaints.

2.2. Successes and good practices

General good practices:

- Nicaragua, in the historical context of far-reaching reforms of its legal and institutional system, has designed its anti-corruption strategy in conjunction with other policies on human development aimed directly at its citizens.
- Social control policies and the training of all sectors in public ethics have received a positive response.
- Nicaragua has placed emphasis on citizen oversight through social auditing and the right to information, as well as community participation in government. The system has fostered trust on the part of the general public, as is shown by the periodic local surveying of perceptions of local government.

Good practices in criminalization and law enforcement:

- Nicaragua has established a rigorous system for the prosecution of corruption, with a consistent approach to injury to the State, illicit property and compensation that has been developed with the Attorney-General's Office and the Comptroller-General's Office in a leading role (arts. 31 and 35).
- The National Police, the Attorney-General's Office and the Public Prosecution Service all have specialized units for the investigation of offences against public administration. Those institutions play a key role. For example, even if the Public Prosecution Service does not indict, the Attorney-General's Office may do so (art. 36).
- The Comptroller-General's Office, the Attorney-General's Office and the Public Prosecution Service cooperate in a coordinated manner. Inter-institutional structures have been created to facilitate the exchange of information between institutions and ensure a balanced inter-institutional system (art. 38).

2.3. Challenges in implementation

General

- Recognizing efforts to create a consolidated system of disaggregated statistics, Nicaragua is encouraged to continue in these efforts.

Criminalization

With respect to criminalization, it is recommended that Nicaragua:

- Ensure that article 446 of the Criminal Code is applied in cases where a public official offers or provides an undue advantage to another public official. If in the future the judicial body does not interpret the law in this sense, it may be necessary to clarify the title of this offence through legislative reform (art. 15 (a));
- Consider clarifying the language of article 449, first alternative, of the Criminal Code in order to clarify the relationship between that provision and articles 446 and 447, paragraph 2, and establish a congruence between the elements and sanctions of both offences (art. 15 (a) and art. 16 (1));
- Consider adding to its legislation passive bribery committed by foreign public officials and officials of public international organizations (art. 16, para. 2);
- Consider adding to its criminal legislation the specific scenario described in article 18 (a) and (b);
- Assess the possibility of amending its legislation by replacing, in the spirit of the Convention, the element of injury with the element of advantage (art. 19);
- Consider amending its legislation to cover bribery in the private sector specifically (art. 21);
- Amend its legislation to cover interference in the production of evidence, as well as the use of the promise, offering or giving of an undue advantage in order to interfere in the giving of testimony, and clarify its legislation in relation to threats (art. 25 (a)); and assess the possibility of balancing sanctions between articles 481 and 184 to 187 of the Criminal Code (art. 25 (b));
- Nicaragua may establish preparation for a corruption offence as a crimi. offence (art. 27, para. 3).

Law enforcement

With regard to law enforcement, it is recommended that Nicaragua:

- Take measures to establish a mechanism for the administration of property that is operational in practice and that applies to all corruption offences committed by an individual or organized group (art. 31, para. 3);
- Ensure that the law is applied in a way that covers confiscation up to the assessed value of intermingled proceeds of crime, where such proceeds have been intermingled with property acquired from legitimate sources, and that covers the confiscation and seizure of income or other benefits derived from such proceeds of crime. If the judicial body does not interpret the law in this sense, it might be necessary to clarify it through legislative reform (art. 31, paras. 5 and 6);
- Nicaragua may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation (art. 31, para. 8);

- Establish a witness protection programme; attach to the list of Act No. 735 the offences established in accordance with the Convention that are not yet included in that list; ensure that all protection measures are implemented, even if the offence is committed by an individual (not in an organized group) (art. 32);
- Consider whether it would be appropriate to enter into agreements or arrangements with other States for the relocation of protected persons. In considering that possibility, it is important that such agreements or arrangements take into account all corruption offences (art. 32, para. 3);
- While it is true that there are relevant provisions for the protection of reporting persons, assess whether current legislation meets the requirements in complex cases of corruption and, as appropriate, continue to develop the relevant policies (art. 33);
- Consider entering into agreements or arrangements providing for the treatment set forth in paragraphs 2 and 3 of article 37 in international cases (art. 37, para. 5);
- Continue with the establishment and strengthening of its database for the purposes of information-sharing between institutions (art. 38);
- Continue its efforts to encourage its nationals to report acts of corruption (art. 39, para. 2);
- Although Nicaragua has established its jurisdiction over offences committed against its officials, it may also establish its jurisdiction over any corruption offence committed against one of its nationals who is not an official (art. 42, para 2 (a));
- Establish its jurisdiction over corruption offences when it does not extradite the alleged offender solely on the ground that he or she is one of its nationals (art. 42, para. 3);
- Nicaragua may establish its jurisdiction over corruption offences when it does not extradite the alleged offender (art. 42, para. 4);
- While the competent authorities are able to use their international cooperation channels to consult with their counterparts with a view to coordinating their actions, if Nicaragua exercises its jurisdiction and has learned that other States parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, ensure that they are used in practice in this regard (art. 42, para. 5).

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)

The requirements for extradition are set out in the Constitution, the Criminal Code, the Code of Criminal Procedure and the Judiciary Organization Act. Nicaragua does not make extradition conditional on the existence of a treaty, but may extradite on the basis of the principle of reciprocity, provided that the requirements set out in

article 18 of Act No. 641 (Criminal Code) are met. Nicaragua may also use the Convention as the legal basis for extradition.

Extraditable offences are those that are punishable under Nicaraguan law by imprisonment for a term of not less than one year (art. 18 of the Criminal Code). Most (not all) offences established in accordance with the Convention are punishable by deprivation of liberty for a term of more than one year. By direct application of the Convention, any corruption offence should be deemed to be included as an extraditable offence in any extradition treaty, although there is no case law in that regard.

The Criminal Division of the Supreme Court is competent to decide on requests for the extradition of a person to or from Nicaragua; application for reconsideration of a judgement is the only recourse available with respect to extradition.

Extradition may not be granted in the absence of dual criminality.

Nationals may not be extradited; the principle of "extradite or try" is set out in article 19 of the Criminal Code.

Nicaragua has an informal procedure for extradition in urgent cases.

There are no legislative provisions on extradition for related offences.

Nicaragua has a mechanism for adapting sentences handed down in another State that ensures that the penalties imposed do not exceed the maximum penalties permitted by the Constitution.

The Nicaraguan authorities have confirmed the existence of a practice of consulting with the requesting State Party before an extradition request is refused.

Nicaragua has entered into various bilateral arrangements and agreements concerning extradition.

With regard to the transfer of sentenced persons, Nicaragua has concluded a multilateral treaty and two bilateral treaties.

Nicaragua has no regulations at its disposal on the transfer of criminal proceedings. While it could apply the Convention directly, there is some concern in that regard owing to the perception that the transfer of proceedings without specific legislation could remove the transferred person from the jurisdiction of the judge that is legally competent to try him or her or infringe the sovereign right of Nicaragua to exercise criminal proceedings.

Mutual legal assistance (art. 46)

The legal basis for mutual legal assistance is in general terms found in the international agreements to which Nicaragua is a State party. Nicaragua regulates mutual legal assistance in its four multilateral treaties and one bilateral treaty, in article 138 of the Code of Criminal Procedure and in chapter XII of Act No. 735. The central authority has a manual of functions. Nicaragua can provide assistance on the basis of reciprocity.

Nicaragua can provide mutual legal assistance through a variety of measures, and also in connection with offences for which a legal person may be held liable.

There are no legislative provisions on the transmission of information to other countries without prior request, nor are there provisions on confidentiality. However, Nicaragua may cover those issues through the direct application of the Convention.

Nicaragua may apply paragraphs 9 to 29 of the Convention to requests for mutual legal assistance provided that it is not bound by a treaty of mutual legal assistance concluded with the requesting State, or in lieu of a treaty if cooperation may thus be facilitated. Nicaragua has responded to two requests on the basis of the Convention.

Nicaragua may provide mutual legal assistance that does not entail coercive measures in the absence of dual criminality provided that such assistance is permitted by an international agreement.

The central authority for mutual legal assistance is the Office of the Attorney-General of the Republic of Nicaragua. Direct communication between central authorities is possible where such communication is permitted by a treaty, and is practised frequently. In urgent circumstances, requests may be sent and received through the International Criminal Police Organization (INTERPOL), by e-mail or orally.

Although they are provided for in international treaties, certain aspects of mutual legal assistance are not provided for in domestic legislation, such as the transfer of detainees for the purpose of testimony, the use of videoconferencing for the giving of testimony, the doctrine of specialty, the principle of confidentiality, the refusal of a request on the grounds that the offence involves fiscal matters, the obligation to give reasons for the refusal of requests and safe conduct; however, it may apply the Convention directly.

Nicaragua consults with the requesting State Party before refusing a request for mutual legal assistance.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

The law enforcement authorities have at their disposal channels of communication with their counterparts, even though they may not have concluded any agreements or memoranda of understanding in that regard. The authorities cooperate through such organizations and networks as INTERPOL, the Police Community of the Americas (AMERIPOL), the Ibero-American Legal Assistance Network (IberRed), the Egmont Group of Financial Intelligence Units, the International Organization of Supreme Audit Institutions (INTOSAI) and the Organization of Latin American and Caribbean Supreme Audit Institutions (OLACEFS). Nicaragua may use the Convention as the legal basis for direct cooperation between its law enforcement agencies.

With regard to joint investigations, Nicaragua has no relevant agreements; however, it may participate in joint investigations on a case-by-case basis.

Nicaragua may use controlled delivery and undercover operations with respect to the offences referred to in Act No. 735. Wiretapping may be used in cases of money-laundering. No bilateral or multilateral agreements or arrangements for the use of those techniques have been concluded; however, the Convention can be used as the legal basis for such use.

3.2. Successes and good practices

- Nicaragua has shown an active interest in international cooperation and has created institutional structures for the purposes of such cooperation. In addition, Nicaragua has provided mutual legal assistance on the basis of the Convention (art. 46, para. 1).
- It is noted that it is common practice to receive a draft request informally in order to correct possible errors and to attach any required additional information (art. 46, para. 16).

3.3. Challenges in implementation

With regard to international cooperation, it is recommended that Nicaragua:

- Nicaragua may also apply extradition in respect of offences that are related to corruption offences but are not extraditable by reason of their period of imprisonment (art. 44, para. 3);
- With regard to the existing bilateral treaties to which Nicaragua is a party, consider each of the corruption offences an extraditable offence, although they are not explicitly defined as extraditable offences in those treaties. With regard to any treaties that Nicaragua may conclude in the future, include therein all corruption offences as grounds for extradition (art. 44, para. 4);
- In cases where a request is not pursuant to the Convention, clarify the law by providing the requesting State with a hearing or other opportunity to present its opinions and provide relevant information (art. 44, para. 17);
- Nicaragua is encouraged to continue strengthening international cooperation on issues relating to corruption (art. 46, para. 1);
- Nicaragua is encouraged to apply the Convention directly in matters not governed by its legislation, in order, inter alia, to avoid refusing assistance on the sole ground that the offence in question also involves fiscal matters (art. 46, para. 22) and to ensure that reasons are given for any refusal of assistance (art. 46, para. 23);
- Nicaragua is encouraged to open a space for considering transfers of criminal proceedings in order to ensure that criminal proceedings may be transferred with a view to concentrating the prosecution (art. 47);
- Consider ensuring that controlled deliveries, undercover operations and wiretapping apply to all corruption offences committed by an individual or organized group (art. 50, para. 1).